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No. 95-282

Supreme Court, U.S.
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IN THE

Supreme Court Of The United States

October Term 1995

ROGER O. BROOKS, et al.

Petitioners,

v.

UNITED AIRLINES, INC., et al.

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of the State of Colorado

REPLY BRIEF

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TABLE OF CONTENTS

A. THE *LINGLE* STANDARD NEEDS TO BE CLARIFIED AND IF NECESSARY NARROWED IN CASES WHERE THE APPLICATION OF RLA-BASED PREEMPTION DOES NOT INVOLVE UNIFORMITY OR PREDICTABILITY OF COLLECTIVE BARGAINING AGREEMENTS IN LABOR-MANAGEMENT RELATIONS 1

B. PETITIONERS SHOULD NOT BE DEPRIVED OF A REMEDY FOR THEIR INDEPENDENT STATE CLAIMS BASED ON A STATUTORY DEFENSE INAPPLICABLE TO THE PARTIES IN THIS CASE . 6

C. RESPONDENTS' "ADDITIONAL REASONS" FOR DENYING THE PETITION FOR WRIT OF CERTIORARI UNDERSCORES THE EXTREME INJUSTICE OF THIS CASE 9

TABLE OF AUTHORITIES

Cases **Page(s)**

Allis-Chalmers v. Lueck,
471 U.S. 202, 208 (1985) 4-6, 9

Dougherty v. Parsec, Inc., 872 F.2d 766
(6th Cir. 1989) 4, 9

Hawaiian Airlines v. Norris,
114 S.Ct. 2239 (1994) 1-2, 6-8, 10

International Union, United Mine Workers of America v. Covevant Coal Corp.,
977 F. 2nd 895 (4th Cir. 1992) 9

Lingle v. Norge Division of Magic Chef,
486 U.S. 399 (1988) 2-5, 10

Statutes

Railway Labor Act, 45 U.S.C. §§ 151 *et seq.* . . . 1-2, 4-8

Respondents' *Brief in Opposition* raises arguments as to why this Court should not grant *certiorari* and hear the merits of this case. Those contentions will be addressed *seriatim*.

A. THE *LINGLE* STANDARD NEEDS TO BE CLARIFIED AND IF NECESSARY NARROWED IN CASES WHERE THE APPLICATION OF RLA-BASED PREEMPTION DOES NOT INVOLVE UNIFORMITY OR PREDICTABILITY OF COLLECTIVE BARGAINING AGREEMENTS IN LABOR-MANAGEMENT RELATIONS

This is a unique and important case which presents a matter of first impression to this Court, to-wit, whether the doctrine of preemption under the Railway Labor Act ("RLA") otherwise applicable to the parties to an existing collective bargaining agreement ("CBA") should be judicially expanded to extinguish independent state claims involving unrelated parties not bound by any CBA or labor-management relationship under the RLA. Otherwise stated, is it consistent with Congressional intent and this Court's precedents to extend preemption under the RLA to parties who have no relationship or recourse under the RLA.

Such a pervasive interpretation of preemption operates to completely extinguish otherwise valid state law claims and leaves the injured parties, the Plaintiffs herein, without a remedy or recourse under law. Preemption was never designed or intended by Congress to effect such a harsh result, and this Court mandated in its decision in *Hawaiian Airlines, Inc. v. Norris*, 114 S.Ct. 2239 (1994) that the "threshold question" to be determined by the Court in a preemption case is "whether the dispute was subject to the RLA in the first instance." 114 S.Ct. at 2251. This threshold determination was never made in the case at bar.[1] Because the RLA does not apply to the parties or

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[1] The operative Colorado Court of Appeals decision was issued on June 16, 1994, four days before this Court's decision in *Hawaiian Airlines*. App. at pps. A-1 through A-20. The Colorado Supreme Court denied *certiorari* review. App. at pps. A-21 through A-30.

facts in this case, the directive of *Hawaiian Airlines*, had it been followed, would have compelled a different result than that reached by the Colorado Courts.

The Colorado Court of Appeals determined as a matter of law that Respondent United Airlines (Defendant below), an entity with which Petitioners (Plaintiffs below) had no contractual, employment or RLA-based relationship, had standing to raise a preemption defense under the RLA. The Colorado Court further determined as a matter of law that Plaintiffs' independent state claims against United were preempted under the RLA, thereby leaving Plaintiffs with no state, federal, contractual or administrative remedy or forum to adjudicate their claims against United.[2]

It is undisputed, indeed conceded, that at no time have any of the parties in this case ever occupied any relationship under the RLA or any labor relationship of any kind. No CBA or other contractual relationship exists (or has ever existed) between the parties. The parties never agreed to resolve their differences through any dispute resolution procedure, RLA-based or otherwise, and none of the parties are bound or required to arbitrate anything. The underlying policy of federal preemption under the RLA - the uniform interpretation of CBAs - is not an issue in this case because the parties are not litigating or disputing the interpretation or application of any CBA between them.

Respondents correctly state that the rationale for RLA-based preemption is "to promote uniformity and predictability in the meaning of collective bargaining agreements," but it necessarily follows, however, that where the rationale of preemption does not exist, preemption itself is inapplicable. Because Plaintiffs' common law fraud and contract claims against United do not arise under or require the interpretation of any CBA involving the parties, the standard set forth in *Lingle v. Norge Division of Magic Chef, Inc.*, 486 U.S. 399 (1988) is inappropriate to the facts and parties in this case.

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[2] App. at pps. A-1 through A-20.

Unlike the Plaintiffs herein, the Plaintiff in *Lingle* was an employee who pursued a remedy provided by the grievance procedure established under the collective bargaining agreement between her union and the company. Simultaneously with the grievance procedure, however, the Plaintiff-employee filed a wrongful discharge action in state court alleging that the Defendant-employer fired her because she had filed a workers compensation claim. 486 U.S. at 401-02. Although both the Federal District Court and the Seventh Circuit Court of Appeals held that the employee's state law claim was "inextricably intertwined" with the collective bargaining agreement and was thus preempted, the Supreme Court in *Lingle* disagreed and reversed the preemption finding. *Id.* at 409-10. Reaffirming the necessity of promoting the uniformity of interpretation of CBAs in labor-management disputes, *Lingle* nonetheless determined that, even if the issues presented by the CBA and the state law claims "would require addressing precisely the same set of facts, as long as the state law claim can be resolved without interpreting the agreement itself, the claim is 'independent' of the agreement for § 301 preemption purposes." *Id.*

Plaintiffs' claims in this case can be resolved without interpreting any CBA between the parties because no such agreement exists. Nor does the underlying rationale of promoting stability of labor-management relations and the uniformity of interpretation of CBAs apply to the facts and parties in this case. No labor-management relationship exists and no CBA between the parties is in dispute. The inapplicability of the *Lingle* standard follows *a fortiori* in the case at bar. Where the rationale of *Lingle* does not apply, *Lingle* does not apply.

The doctrine of preemption is at its heart a containment mechanism designed and intended by Congress to preempt state law claims by employees which are intended by management and labor to be settled within the confines of a bargained-for grievance procedure in an existing CBA. *Id.* at 405-10. Allow-

ing labor-management disputes to be determined on a state-by-state basis outside the confines of the parties' dispute resolution procedures threatens the stability of labor-management relations and the uniformity of the interpretation of CBAs, and preemption exists to prevent this. What is beyond peradventure, however, is the fact that neither the rationale of preemption nor the intent of Congress in enacting the RLA should have any application to independent disputes between unrelated parties that do not involve any labor-management relationship nor the uniformity of application of any CBA between the parties.

The Sixth Circuit succinctly analyzed this issue in *Dougherty v. Parsec, Inc.*, 872 F.2d 766, 770-71 (6th Cir. 1989) as follows:

> One of the basic concerns of the Supreme Court in [*Lueck*] was that application of state law to labor contract terms would result in uncertainty in contract negotiations and increase the number of disputes over contract interpretation. Here, allowing a state law action to proceed against a party who has not signed the labor contract, and whose obligations are not defined by the contract, will neither define nor modify the contractual relationship between the employer and the union...
>
> Another major policy underlying *Lueck* was the concern that permitting state law claims would allow plaintiffs to avoid the fundamental labor policy that contract disputes should be decided by arbitrators in the first instance. 'That is not a problem where a tortious interference with contract claim is being made against a non-signatory' because the non-signatory is not bound by the contract (hence not bound to arbitrate).

Neither *Lingle* nor *Lueck* nor any other decisions by this Court hold that the rational behind RLA-based preemption

should be applied to parties who have no RLA relationship and no CBA at issue between them. An unwarranted extension of the *Lingle* standard to the facts and parties of this case is inappropriate and unfair, and Petitioners submit that this Court must clarify, and if necessary narrow the *Lingle* standard to ensure that legitimately injured Plaintiffs who have no recourse other than state court, are not preempted from bringing independent claims by a federal doctrine whose rationale does not apply to them.

The legal dispute herein turns on two contracts, one involving Plaintiffs and their employer, Frontier Airlines, and one involving United and People Express. The first contract was entered into on October 17, 1985 between Plaintiffs, Frontier Airlines, and People Express. The October 17, 1985 Agreement contained contractually enforceable terms prohibiting Frontier and People from, *inter alia,* selling Frontier's assets above a certain value to any third party. The second contract was entered into on July 10, 1986 between United and People, and it provided for the sale of Frontier by People to United. Plaintiffs were not a party to this agreement.

This Court cautioned in *Lueck* that "not every dispute concerning employment, or tangentially involving a provision of a collective bargaining agreement, is preempted by § 301 or other provisions of the federal labor law...." 471 U.S. at 211-212. The dispute in the case at bar does not concern employment, and Plaintiffs' fraud and contract claims can be resolved without interpreting any CBA between the parties. The Colorado Court determined that the October 17, 1985 Agreement was only "in part" a CBA, and the July 10, 1986 Agreement is not a CBA at all. Neither of these agreements provides any grievance mechanisms or dispute resolution procedures applicable to the parties in the case at bar. Substantive protections against fraud and tortious interference with contract exist under Colorado law, and this Court noted in *Hawaiian Airlines* that its earlier prece-

dents uphold the proposition that "substantive protections provided by state law, independent of whatever labor agreement might govern, are not preempted under the RLA." 114 S.Ct. at 2246.

B. PETITIONERS SHOULD NOT BE DEPRIVED OF A REMEDY FOR THEIR INDEPENDENT STATE CLAIMS BASED ON A STATUTORY DEFENSE INAPPLICABLE TO THE PARTIES

Hawaiian Airlines rejects any kind of "pervasive preemption" and requires a determination at the "threshold" to whether the RLA even applies to the parties before preemption is applicable. The RLA does not apply to the parties in this case, a fact not in dispute, and the time has come for this Court to clarify, and if necessary narrow the standard to prevent the broad and pervasive extinguishment of Plaintiffs' contract rights based on a federal statute inapplicable to the parties.

Hawaiian Airlines reaffirmed the proposition stated in *Allis-Chalmers v. Lueck*, 471 U.S. 202, 208 (1985) that whether "federal law preempts a state law establishing a cause of action is a question of congressional intent." 114 S.Ct. at 2243. *Hawaiian Airlines* found that the RLA "establishes a mandatory arbitral mechanism" to resolve disputes between parties to an existing collective bargaining agreement, and held that "Congress' purpose in passing the RLA was to promote stability in labor-management relations by providing a comprehensive framework for resolving labor disputes." 114 S.Ct. at 2243-44.

Petitioners submit that *Hawaiian Airlines* has properly defined the scope and application of RLA-based preemption consistent with Congressional intent so as to leave no room for doubt that application of preemption to a case which does *not* involve the policy or rational of promoting "stability in labor-management relations" is inappropriate.

If the true intent of Congress and the true purpose of preemption were to extinguish state law claims in cases where the stability of labor-management relations was *not* at issue, and where the parties were *not* seeking to resolve a labor-management dispute, then Petitioners respectfully submit that this Court would have articulated both that proposition and the underlying Congressional intent to support it in *Hawaiian Airlines*.[3]

The inapplicability of the RLA to these parties renders the application of RLA-based preemption even more inappropriate and egregious; it is unjust, unfair and inequitable, as well as contrary to Congressional intent, to apply the RLA to Plaintiffs *only* insofar as it preempts their claims, but not insofar as it provides them with a remedy. That was never the intent of Congress in enacting the RLA. 114 S.Ct. at 2243-44.

The inconsistency of this harsh result, and the significance of the *Hawaiian Airline* requirement of a threshold determination, can be seen clearly in connection with the argument advanced by Respondents that the "question of whether the Plaintiffs have an alternative remedy under federal law is not before this Court because the Plaintiffs have chosen not to attempt to invoke the Railway Labor Act or any other federal law as a basis for recovery." [*Brief in Opposition* at 16].

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[3] The RLA clearly states that Congress intended the Act to apply only to disputes between "the carrier and the employees thereof," and absent a clearly expressed Congressional intent to the contrary, the statutory language of the RLA should be regarded as conclusively prohibiting the expansion of its purview beyond its stated terms. Nowhere in the Congressional history of the RLA is there any evidence of any Congressional intent to expand the scope of RLA-based preemption beyond its limited application to the labor or employment relationship; indeed, the *Hawaiian Airlines* court noted that the "inconclusive [Congressional] debate hardly calls for fashioning a broad rule of preemption," and held that the language of the RLA "does not compel the conclusion that all issues touching on the employment relationship must be resolved through arbitration or that all claims involving rights and duties that exist independent of the CBA are thereby preempted. Our precedents squarely reject this pervasive preemption." 114 S.Ct. at 2245, notes 4 and 5

This argument is a *non sequitur* because the RLA, were it applicable to these parties, *would* provide a remedy. Plaintiffs are precluded from invoking the RLA to resolve the claims at issue herein because they have no labor or contractual or RLA-based relationship with Respondents that would enable them to do so. The parties in this case are strangers to each other, brought together in litigation by the fact that United tortiously breached and interfered with contract rights held by Plaintiffs which were unrelated to and independent of the RLA.

Respondents argue that it is irrelevant whether preemption of Plaintiffs' claims effectively grants United immunity, and equally irrelevant whether Plaintiffs are left without a remedy. Respondents argue that the "question of what remedy is available under the controlling federal law is a separate and distinct question which has no bearing on the preemption inquiry." [*Brief in Opposition* at 15-16]. Petitioners disagree.

It should *always* matter, particularly to this Court, whether legitimately injured Plaintiffs otherwise entitled to a remedy at law have been completely foreclosed from their day in Court, and it should *always* concern this Court that Defendants otherwise liable for their actions have been granted immunity by the broad application of a federal statute.

There should be no higher purpose for *Hawaiian Airline's* directive that a "threshold" determination be made as to whether the RLA even applies than in a case such as this one, where the erroneous application of RLA-based preemption extinguishes independent state claims and leaves the injured parties without a remedy against the entity which has harmed them. Along these lines, Respondents advance the argument that Plaintiffs had the ability under the RLA to pursue claims "directly against their employer," Frontier Airlines, for breach of the Plaintiffs' contractual rights. [*Brief in Opposition* at 15, note 5]. What Respondents failed to mention, however, is the fact that the activities by United which form the basis for this action resulted

in the financial collapse and resulting bankruptcy of Frontier Airlines, an insolvent entity. Plaintiffs are entitled under Colorado law to bring claims against the party which has caused them harm, i.e., United, and it is no defense for such a party to assert that Plaintiffs might have had separate claims against another entity, particularly when that party's own actions rendered the other entity insolvent and incapable of providing a remedy.

For this very reason, Federal Courts have held that "'it would not further the policies of either the Congress in enacting the federal labor statutes, or the Supreme Court in *Lueck*, to give a third party who has allegedly interfered with a labor contract what effectively amounts to immunity,'" *Dougherty v. Parsec, Inc.*, 872 F.2d 766, 771 (6th Cir. 1989), and have cautioned against the "paradox" inherent in allowing preemption to be used to extinguish claims that leave the injured parties without "an adequate forum for resolution of their claims." *International Union, United Mine Workers of America v. Covenant Coal Corp.*, 977 F.2d 895, 899-900 (4th Cir. 1992).

C. RESPONDENTS' "ADDITIONAL REASONS" FOR DENYING THE PETITION FOR WRIT OF CERTIORARI UNDERSCORES THE EXTREME INJUSTICE OF THIS CASE

Respondents argue that it would be "inappropriate" for this Court to review the opinion of the Colorado Court of Appeals because that opinion "was not selected for official publication," and assert that such an opinion "would not create any confusion among the lower courts as to the proper application of this Court's preemption precedents." [*Brief in Opposition* at 18].

The contention that this Court should shrink from hearing this case because the nullification of Plaintiffs' state claims was done through an unpublished opinion is both outrageous and troubling on several levels. No Court should *ever* be allowed to evade judicial review or scrutiny by this Court by rendering a decision designated as "unofficial" or "unpublished."

Moreover, such decisions affect the *substantive rights* of the litigants, and have had a very real and damaging affect on Plaintiffs. The Colorado Court of Appeals' decision expanded the *Lingle* standard beyond both Congressional intent and the express terms of the RLA, and did so in a way inconsistent with this Court's ruling in *Hawaiian Airlines*. It matters not whether such a ruling, which affects the legal and substantive rights of the litigants, is published or not. Injustice anywhere, particularly behind closed doors, is a threat to justice everywhere.

Petitioners respectfully pray for the issuance of a writ of *certiorari* in this case.

Respectfully submitted,

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